

THURMONT POLICE DEPARTMENT

GENERAL ORDER	<i>Date Issued:</i> February 1, 2016	<i>Effective Date:</i> February 1, 2016	<i>Order No:</i> Chapter 14.3
<i>Authority: Chief of Police</i> <div style="text-align: center;"><i>Gregory L. Eyer</i></div>		<i>Manual Page No:</i>	
<i>Subject: Public Information Act</i>		<i>Replaces Page No:</i>	
<i>Accreditation Standard:</i> Chapter	<i>Distribution:</i> ALL	<i>Amended:</i> 10/14/2021	<i>Number of Pages:</i> 6
<i>Related Documents:</i>		<i>Rescinds:</i> New Policy	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

I. PURPOSE:

The purpose of this policy is to memorialize the Thurmont Police Department's standards for the review of certain requests for disclosure of records. Md. Code Ann. Gen. Prov. Art. 4-101, *et seq.* The Department desires to promote effective law enforcement which requires the participation of the public and full and open communication with witnesses and the victims of crimes. It is the determination of the Department that it is important to protect the privacy of individuals who report and witness infractions and crimes as well as the accused. For these reasons, the Department has determined that this policy is appropriate and necessary to promote effective policing and cooperation and that adherence to this policy is in the public interest. Public Information Act non-conforming requests should promptly be provided to the Chief of Police and Town of Thurmont's counsel for review.

II. POLICY:

It is the policy of the Thurmont Police Department to permit the custodian to exercise its discretion to deny inspection of records or investigations conducted by the Thurmont Police Department, and investigatory files compiled for law enforcement, for prosecution purposes by the Thurmont Police Department if such records are requested by any person who is not a "person in interest".

III. DEFINITIONS:

Custodian of Records: Administrative Coordinator and Receptionist

Note: The names of the individuals holding these positions will be submitted to the Attorney General's Office on an annual basis via (PIA.Custodians@oag.state.md.us)

Person In Interest: 1) A person or governmental unit that is the subject of a document, or a designee of the person or governmental unit who is the subject of a document; 2) if the person who is the subject of the document has a legal disability, i.e., the person is mentally incompetent, etc., then the parent or legal representative of the person who is the subject of a document.

Non-Conforming Requests: A request for a Police Record by a third party and/or not directly by the "person in interest."

Reasonable Fees: means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

IV. RECORDS OF INVESTIGATION:

The custodian may deny inspection of records of investigations conducted by the Thurmont Police Department, subject to the provisions of this section.

A. In exercising their discretion, the custodian will first consider whether the person is a "person in interest". A person in interest is one who is the subject of the public record or a designee of that person.

B. If the person is not a person in interest, the custodian may deny part, or all of the request.

- 1) In determining whether to deny part or all of the record, the custodian will consider whether inspection would be contrary to the public interest.
- 2) For the purposes of making a determination of whether inspection is in the public interest, the custodian may consider: (a) That the common law rule generally holds that police records are confidential; (b) whether the investigation is ongoing or closed and (c) any of the considerations enumerated under Gen. Prov. Art. § 4-351¹.
- 3) If the custodian believes that inspection is contrary to the public interest, the custodian shall deny the request for inspection in whole or in part.
- 4) Once a determination has been made, the custodian shall clearly state in their response to the requester whether the request has been denied in whole or in part.

¹ For a list of those considerations, see Section IV.C. below.

5) It is the policy of the Thurmont Police Department to handle such non-conforming requests and communications through the Chief of Police and counsel for the Town of Thurmont.

C. A custodian may deny inspection by a person in interest only to the extent that the inspection would:

- 1) interfere with a valid and proper law enforcement proceeding;
- 2) deprive another person of a right to a fair trial or an impartial adjudication;
- 3) constitute an unwarranted invasion of personal privacy;
- 4) disclose the identity of a confidential source;
- 5) disclose an investigative technique or procedure;
- 6) prejudice an investigation; or
- 7) endanger the life or physical safety of an individual.

D. A custodian shall deny inspection of a public record or any part of a public record if:

- 1) by law, the public record is privileged or confidential
- 2) the inspection would be contrary to:
 - a) a State Statute
 - b) a federal statute or a regulation that is issued under the statute and has the force of law
 - c) the rules adopted by the Court of Appeals
 - d) an order of a court of record

E. The Maryland PIA does not require the custodian to provide information not contained in public record or to create such a record if it does not exist at the time of the request.

V. ARREST WARRANTS AND CHARGING DOCUMENTS:

A. An arrest warrant and charging document may not be open to inspection until:

- 1) the arrest warrant has been served and a return of service has been filed in accordance with Maryland Rule 4-212(g); or
- 2) 90 days have elapsed since the arrest warrant was issued

VI. PERSONNEL RECORDS:

A. A custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.

B. A custodian shall allow inspection by:

- 1) The person in interest; or
- 2) An elected or appointed official who supervises the work of the individual.

C. A record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record for purposes of section, *Public Information Act General Provisions 4-311*, and can be released subject to the custodian's discretion as governed by the provisions of Section IV above.

1) The custodian shall allow inspection of any record described in VI.C. to: (1) the United States Attorney; (2) the Attorney General; (3) the State Prosecutor; or (4) the Frederick County State's Attorney Office.

2) With respect to inspection of any record described in VI.C., except for inspections by the persons identified in VI.C.1 above, the custodian: (i) shall redact (a) medical information of the person in interest; (b) personal contact information of the person in interest or a witness; or (c) information relating to the family of the person in interest; and (ii) may redact the portion of the record that reflects any witness information other than personal contact information. The custodian shall also redact any additional information they believe would be contrary to the public interest, such as social security numbers or other personal information.

3) With respect to any record described in VI.C., the custodian shall notify the person in interest when the record is inspected, but may not disclose the identity of the requestor.

D. A record of technical infraction is a personnel record for the purpose of "*Public Information Act General Provisions 4-311*," and cannot be released. (*Technical infraction means a minor rule violation by an individual solely related to the enforcement of administrative rules that: Does not involve an interaction between a member of the public and the individual; Does not relate to the individual's investigative, enforcement, training, supervision, or reporting responsibilities; and Is not otherwise a matter of public concern.*)

VII. TIMELINESS OF DECISION:

A. A custodian who approves the PIA request shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application for the request of record.

B. A custodian who denies the application for the request of the record shall:

- 1) immediately notify the applicant
- 2) within 10 working days, give the applicant a written statement that provides:
 - a) the reasons for the denial

- b) the legal authority for the denial
- c) allow inspection of any part of the record that is reasonably severable

C. With the consent of the applicant, any time limit imposed under this section may be extended for not more than 30 days.

VIII. FEES:

A. Subject to limitations, a custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record. This fee includes the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs. The staff and attorney review costs included in the calculation of actual costs incurred under this section shall be prorated for each individual's salary and actual time attributable to the search for and preparation of a public record under this section.

B. The custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.

C. A fee schedule prepared by the Chief of Police is outlined in an attachment of this policy.

Amended Date: 10/14/2021 in accordance with House Bill 670 (effective 07/01/2022)

Amended by: Lt. P.A. Droneburg

Reviewed by: Leslie Powell, Powell, LLC, 19 N. Court St. Suite 201, Frederick, Md. 21701

Review Date: 12/13/2021

Rescinds:

Order Written By: Lt. P.A. Droneburg

Order Edited and Approved By: Chief Gregory L. Eyer

Accreditation Standards Included in this Order

CHAPTER